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A CASE *which concerns* MINISTERS *about the quarterly Poll-Act.*

THE Poll Act runs thus. There is 12 *d.* quarterly to be paid by all in general for their Heads; and then over and above, there are several Ranks of men named. The Gentleman that is worth 300 *l.* must pay 20 *s.* quarterly. The Widow likewise, and the Virgin, that is worth a 1000 *l.* Then several Officers in regard to the Law, whether more or less worth, shall pay alike 20 *s.* quarterly. Then there is the Minister, who is distinguished into the Clergyman, and the Preacher not Episcopally ordained, who if the one have 80 *l. per Ann.* in some Benefice or Ecclesiastical Profits, or the other in Gratuities or Contribution, they are to pay so likewise. Then there is the Tradesman, and he is to pay 10 *s.* quarterly, if he be worth 300 *l.* and be he never so rich, no more.

This is the Act, from whence arises the Question concerning the Minister, Whether the Person that is Episcopally ordain'd, and has not 60 *l.* in any Ecclesiastical Emolument (nor perhaps half so much) and so by the Act is not to pay but 12 *d.* quarterly as he is a *Minister*, may yet be brought in as a *Gentleman*, and so made to pay 20 *s.* quarterly, unless he can swear that he is not worth 300 *l.* and so come off.

This is the Question. This the Case, whereby this Act, as to the Minister, is made alike as a Rope and Butter, so that when one *slips* the other shall *hold*; when by one Passage he escapes in this Act, he shall yet be strangled by another, if the Assessors, and Commissioners please.

To decide this Question therefore, That a Person ordained by a Bishop, and so made a Clergyman, cannot be look'd on in the Eye of the Law as a Gentleman, and consequently not to be charged as such, I offer these Reasons.

1. The Clergyman and Gentleman are under two distinct Orders, and he that is under the one, cannot be dealt with as under the other. It is true, that when he is made Master of Arts, he is a Gentleman, but when Ordain'd, he is brought into another Order. In *Law*, if you sue him under the Title of a *Gentleman*, he will Nonsuit you, because you should write him *Clerk*. In *Divinity* (according to the Schools) he has received an *Indelible Character* by his Orders, that distinguishes him from others. In all Law, the Common-Law, the Statute-Law, the Civil-Law, the Canon-Law, and in all Religions, and Countries, these are distinguished.

2. The Fundamental design of a Poll-Act, is not to rate Men for their *Estates*; but their *Persons*, according to the Rank, State, Quality, Office, Denomination, or Condition of Life they are in; and herein does it differ from a Mony-Bill, which rates men in proportion to their Wealth. A Poll-Bill therefore does, and must conceive every Man under some one Rank, or otherwise we are made Monsters, as if we had two Polls, and might be rated by either. But seeing none are, or may be *rated* but by one, they are *ratable* by one only. To rate us then who are Ministers for our Temporal Estates, when the Act rates us for our Spiritual only, in reference to our proper Rank, it destroys the Act as a *Poll-Act*; I mean it is Arbitrary proceeding against the Act.

3. This very Act being such, does accordingly distinguish us into our proper Ranks and Orders: It distinguishes the Gentleman, the Minister, the Tradesman, and others. Now what the Law it self distinguishes, must be distinguish'd, and we are to be rated accordingly. *Lex distinguit distinguendum est.* This cannot be evaded.

4. Seeing a Poll-Act rates Men, not according to their Riches, but Ranks; and this Act begins with Gentlemen, and says, That *every Gentleman that is worth* 300 l. *shall pay quarterly* 20 s. By *every Gentleman*, must such and such only be understood, as are not afterward specified under some other Rank or Denomination; for if they be, it is *that* distinguishes them, and appoints them to be rated under the Rank so specified, and not as Gentlemen. As for the Temporal Estates of Clergymen, we all know that they are charged, and pay for them like other Folks in the Land Tax, and the like Bills: But in this Act they are charged only in regard to their Spiritual Emoluments; and what the Act charges not, is not chargeable by the Assessors.

5. As the Tradesman, tho he be a Gentleman born, and bears his Arms in his Seal and Plate, and is a Man worth Thousands, must yet be rated only as a Tradesman, because the Act so appoints it: So must the Minister, tho a Gentleman, be rated only in his own Capacity of a Minister, because the Act likewise appoints no otherwise.

6. The Constitution of this Nation does consist, according to the *Book of Common Prayer*, in the Office for the *Gunpowder Treason*, of a King and Three Estates, which in Latin is *Tres Ordines Regni*. These Three Estates, or Orders of the Realm, are the *Clergy*, (represented in Parliament by the Bishops) *Nobility*, and *Commonalty*. The Commonalty contains the Gentlemen, Tradesmen, and all others that are not of the Nobility or *Clergy*, which are represented all in the Parliament by the Members of the House of *Commons*. Now to confound

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the Gentleman and the Clergyman, is not only to violate this Act, but the Constitution of the Nation.

From hence (upon this Supposition, that the *Common-Prayer-Book* be right) there arises an Argument irrefragable. We must not interpret this Act, nor any Act so, as to make it intend that, which the Parliament it self cannot do. Acts of Parliament are Laws for the Administration of the Government; and all Laws for the Administration, must be subordinate to the Constitution.

If you will gainsay the Common-Prayer-Book, and affirm the Constitution of this Realm not to consist of a King and Three Estates, but of Three Estates only, and that the King is one of them; take heed you bring us not again into the Time of *Charles the First*, and by your beginning to confound the Clergyman with the Gentleman, strow the way for the throwing down the Church, and throwing out the Bishops.

It may be objected, that when it is said in the Act, *None of the said Persons so charged, shall be further charged, or pay as a Gentleman*: this may be inferred, That if any of them then be not *so charged*, they may be charged as Gentlemen.

Unto this Objection. Supposing (not granting) this to be the Intention of the Act, I answer, That the *said Persons* here *so charged*, are grammatically to be construed of the Preacher not Episcopally ordained, who is distinguished from the Clergyman (that is so ordained) spoken of immediately before, as appears by the very words themselves, which are, *the said last mentioned Persons*, that is, *these* in opposition to *them*; and for this reason, because these Preachers not Episcopally ordained, are in Law still Laymen; and if they be not charged as *Preachers*, they may as *Gentlemen*, supposing them to be so, or reputed so, or write themselves so: But a Clergyman brought from the State of the Laity, by Orders, into that of the Clergy, must be dealt with in point of Law, and assessed as a Person distinct from them, according to this very Act.

Besides, I offer another Argument from the Contexture of the Act, which may satisfy any judicious Person, and it is this, That if the Clergyman were liable to be charged as a Gentleman, then were there no need to have this Clause mentioned but once, in regard to all the Persons under the several Denominations in the same Paragraph, and to have been said only at last; *And none of all the said Persons so charged to be further charged, or pay as a Gentleman, or reputed Gentleman*: Whereas instead of *all the said Persons*, it is express'd here only *the said last mentioned Persons*; and this Clause is put in the same Paragraph,

grudge, which I need not, and should be put but once for them all; if Clergymen might in Law, as the others, be accounted, and rated as Gentlemen.

Paragraph in the Act is as follows.

" And be it further enacted, That every Curitor, Philizer, Attorney, Solicitor, Clerk in Chancery or Exchequer, or other Courts of Record or Equity, or Scrivener, or practising as such; and every Chancellor, Commissary, Official and Register; and every Advocate, Proctor, Apparitor, and Publick Notary, or practising as such, and all other Officers in any Court; and all Merchants, Brokers, and Pawn-Brokers, shall be charged and pay 30 l. quarterly at the several days before-mentioned: And none of the said Persons charged, to be further liable to be charged, or pay as a Gentleman, or reputed Gentleman. And also that every Clergyman not being a Lord Spiritual, having or receiving in, or by any Benefices, Preferments, Contribution, or otherwise, to the value of 60 l. a Year, or upwards: And every Preacher or Teacher in any Congregation whatsoever, not having taken Orders according to the Discipline of the Church of *England*, having or receiving in Contributions, Rewards and Bounties, or otherwise, to the value of 60 l. a Year, or upwards, shall be charged and pay 30 l. quarterly, at the several days before-mentioned last mentioned Persons to be charged, to pay as a Gentleman, or reputed Gentleman."

If any for all this will persist and say, that by *the said last mentioned Persons*, the Act does intend the Clergymen *before*, as well as the Preacher that is not in Orders *after*, he may say so, but can never prove it. That the one cannot in construction of the Law be made or accounted, and so charged as a Gentleman, as the other may upon supposition the Act means so. I have offer'd my Reasons. Whosoever will gainsay them, must answer them, or else be better advised. *Secunda cogitationes prudentiùs & moderatiùs consulunt: Et prudentius quia moderatius.*

This with all submission to the Lawyers, and all wiser Judgments, is offered to the consideration of such as are commissioned for the execution of this Act,

By *J. HUMFREY*, Minister.

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